

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	No. 3:12-0179
v.	)	Judge Sharp/Brown
	)	
DUSTIN B. BOGART, et al.,	)	
	)	
Defendants	)	

**O R D E R**

The Bogarts have filed a motion to dismiss (Docket Entry 66) to which the Defendant Southern Country Ranch has attempted to join (Docket Entry 71). The United States has now filed a response to the Bogarts' motion to dismiss. (DE No. 75) In the Government's response, they also note at Footnote 1 that Mr. Jerry Speer has attempted to file the same type motion, but that he is not authorized to represent Southern Country Ranch in his personal capacity as Trustee.

The Magistrate Judge believes that the latest motion to dismiss is precluded by the Magistrate Judge's earlier recommendation that an almost identical motion be denied (Docket Entry 53). This recommendation was accepted and approved by Judge Sharp on October 30, 2012 (Docket Entry 61).

To the extent this motion is an effort to request the Magistrate Judge to reconsider his earlier report and recommendation, it is **DENIED**. To the extent that it is a motion for the District Judge to reconsider his order adopting the report

and recommendation, that is a matter for the District Judge to decide.

As to the motion to join the Bogarts' motion by Mr. Speer as Trustee of Southern Country Ranch, the Magistrate Judge believes for the reasons previously stated in his Order of November 29, 2012, (DE No.70) Mr. Speer may not file formal pleadings on behalf of Southern Country Ranch. The Magistrate Judge understands that Mr. Speer disagrees with this view. However the Magistrate Judge believes that his motion to join the Defendants' motion to dismiss (Docket Entry 71) must be stricken inasmuch as it was not filed by an attorney on behalf of Southern Country Ranch. If Mr. Speer disagrees with this ruling by the Magistrate Judge he should file a notice of appeal with Judge Sharp within **14 days** of the entry of this Order. In the event the motion is allowed by Judge Sharp then the Magistrate Judge would recommend it be denied for the reasons cited in the earlier report and recommendation (Docket Entry 53).

Southern Country Ranch is specifically cautioned that failure to respond to the complaint through an attorney can result in a default being entered against them.<sup>1</sup>

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<sup>1</sup>The Magistrate Judge does note there is an unpublished Sixth Circuit case, *Keith Mitani v. Federal Home Loan Mortgage Corp.* Case No. 12-169 decided December 12, 2012, that appears to allow a *pro se* executor to represent the estate of his father. There is no discussion of his *pro se* status in the decision. However, it appears he may have been the sole beneficiary of the Estate, a possibility discussed by the *Shepherd v. Wellman*, 313 F.3d 963 (6<sup>th</sup> Cir. 2002). There has been no showing Mr. Speer fits in this category.

Mr. Speer has sent the Court a notice of status and statement in opposition to order and motions to show cause and motion to void and annul all orders on December 10, 2012. The **Clerk** will docket this as a motion to reconsider my earlier orders, which is denied. I also decline to recuse myself from this case.

It also appears this document is also an attempt to appeal my earlier orders. As such, the **Clerk** should forward this pleading to Judge Sharp for his consideration as an appeal.

It does not appear that an answer has been filed by either the Bogarts or Southern Country Ranch. Inasmuch as in the Magistrate Judge's opinion the Bogarts' motion to dismiss has been denied and their new motion to dismiss, which appears to be identical to their previous motion is therefore without merit, they should file an answer to the complaint within **28 days** of the entry of this Order. Failure to do so can result in the Government seeking a default.

It is so **ORDERED**.

/s/ Joe B. Brown  
JOE B. BROWN  
United States Magistrate Judge